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**ARIZONA ATTORNEY GENERAL**

May 19, 1955  
Opinion No. 55-122

REQUESTED BY: The Honorable D. L. Greer  
Apache County Attorney  
St. Johns, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General  
Norman H. Whiting, Assistant Attorney General

QUESTION: Do the provisions of Sec. 27-204, ACA, 1939, as amended, (which provide that no service is necessary in an adoption proceeding, except on those parties required to give consent), deprive the father of a child born out of wedlock of due process of law, where said father has failed to comply with the provisions of Sec. 27-203 (1b), ACA, 1939, as amended, by either subsequently marrying the mother of said child or recording in the Office of the State Bureau of Vital Statistics a notarized Certificate of Parental Acknowledgement, where service of the petition and order fixing the date for hearing are not served upon said father (which latter section provides that the father of said child born out of wedlock is not required to give consent)?

CONCLUSION: No. Where the putative father has not acknowledged parentage, either by subsequent marriage to the mother, or by recording in the office of the State Bureau of Vital Statistics, prior to the filing of the petition for adoption, a notarized Certificate of Parental Acknowledgement as to such child, or further, has not been established as the father by any of the actions set forth in Article 4, Chapter 27, on bastards.

Much importance has been attached to Section 27-401, ACA, 1939, declaring all children legitimate and establishing their right to inherit from their natural parents and from their kindred heir.

This section, by itself, has no substantive effect, and is only declarative of policy. It is not until parentage has been established by actions under Article 4, Chapter 27, or by acts described in 27-203, ACA, 1939, that any rights accrue to the child or any duties are imposed upon the father.

"Sec. 27-203, sub-section (1b). -- The mother only of a child born out of wedlock, but the consent of the father of a child born out of wedlock

shall be required if the father has acknowledged his parentage, either by subsequent marriage to the mother, or by recording in the office of the state bureau of vital statistics, prior to the filing of the petition for adoption, a notarized certificate of parental acknowledgment as to such child, and consent of the father shall be required if his parentage has been established through proceedings instituted under the provisions of article 4, chapter 27, Arizona Code of 1939."

Sec. 27-401 seems to place on the father a duty of support, and, it would seem, give him a right to the companionship and earnings of such child. But again, these duties and ensuing rights do not attach until parentage has been established.

Minnesota has laws very similar to ours, as do many other states, concerning bastards, except for Section 27-401. By Minnesota law, the paternity of child is established in proceedings similar to ours. The father of an illegitimate child is not required to give consent, unless he has acknowledged his paternity in writing, or against whom paternity has been adjudged. 257.18-257.33 M.S.A. 1945, 259.63, 259.05 M.S.A., 1945.

The case, In Re Adoption of Anderson (Minn.) tp N.W. 2d 278, holds that giving notice to the father of an illegitimate child is required only where the parentage has been established.

The question of lack of due process does not arise, until an attempt is made to deprive an individual of a right, without his having proper notice of the action. It necessarily follows that if one does not have a right, he cannot demand notice. There are quite a number of cases holding that the natural father of an illegitimate child has a greater right to the custody of such child than anyone, except the mother, but these are always cases where the parentage has been established by acknowledgment or otherwise.

We are of the opinion that a father of an illegitimate child, where parentage has not been established, either by his act in acknowledgment or by action at law, has no duty to support and educate and has no right concerning the child, and therefore, requires no notice of the pendency of an action in which the welfare

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of the child is involved. The right to the companionship of a child is never absolute, but a child's welfare is always in the hands of the State to decide what is for the greatest benefit of the child.

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